IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1370 of 1981

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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NIMOR P M SHAH THROUGH HIS HONEST MUKESHBHAI - Appellant(s)
Versus
B J JHALA & 2 - Defendant(s)

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Appearance :
MR MD PANDYA for Appellant(s) : 1,
MR KF DALAL for Defendant(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 18/08/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged the judgment and award of the Motor Accident Claims Tribunal No.4 (Main), Ahmedabad passed in M.A.C.P. No. 265 of 1978 dated 28/29.01.1980 whereby the Tribunal partly allowed the said petition.

2.0 The brief facts of the case are that on 17th April, 1978, the appellant met with an accident caused by a truck driven by present

opponent No.1 and owned by present opponent No.2. On account of the said accident, the appellant received serious bodily injuries, and hence, he filed a petition claiming an amount of Rs.40,000/- by way of compensation.

2.1 In the said petition, after hearing the parties, the Tribunal passed the judgment and award which is under challenge in this appeal.

3.0 Heard, learned Counsel for the parties. It was the case of the appellant before the Tribunal that on the day of incident when he was crossing the road, he was dashed by a truck driven by opponent No.1. The case of the appellant is supported by evidence of one witness-Jitendrabhai(Exh.63). He has stated that on the day of the incident he was standing on a 'Pan Galla' near the place of incident and he saw the appellant was crossing the road from southern direction to northern direction and at that time opponent No.1 came from the eastern side and

dashed the appellant. He, thereafter, filed a police complaint in which he has stated that the width of the road at the place of incident is about 22' feet. It may be noted that opponents have neither filed any written statements nor have led any oral evidence to controvert the story of the appellant. Hence, the Tribunal is justified in coming to the conclusion that the appellant received injuries on account of the rash and negligent driving on the part of the opponent No.1 and hence the appellant is entitled to compensation. The Tribunal, therefore, awarded an amount of Rs.22,000/- by way of compensation.

3.1 On perusal of the impugned judgment and award, it appears that while awarding the amount under the head of loss of future income, though, the Tribunal-itself has observed that taking into consideration the age of the appellant if a multiplier of 18 years is applied the petitioner shall be entitled for an amount of Rs.21,600/-,

it has awarded only Rs.5,400/- assuming that if the amount of Rs.5,400/- is properly invested that would augment by four times and would result into the appellant getting Rs.21,600/- at the age of 21 years. The said observation made by the Tribunal is erroneous, and hence, the same requires to be reversed. The appellant, therefore, shall be entitled to an additional amount of (Rs.21,600 – Rs.5,400)= Rs.16,200/- under the head of loss of future income.

3.2 Under the head of transport the Tribunal has awarded amount of Rs.300/- only, overlooking the fact that on each occasion the appellant was required to be accompanied by either of his parent. Hence, under the head of transport charges, the appellant shall be entitled to an additional amount of Rs.200/-. As regards the aspect of compensation under the head of attendance charges the Tribunal has not awarded attendance charges in respect of father of the appellant. The appellant, hence, shall be

entitled for an additional amount of Rs.160/- towards attendance charges in respect of his father.

3.3 The Tribunal has awarded Rs.400/- for special diet. However, looking to the fact that the appellant had to under go treatment for skin grafting, the appellant shall be entitled for an additional amount of Rs.100/- under the head of special diet. Thus, the appellant shall be entitled for an additional amount of Rs.(16,200 + 200 + 160 + 100 = 16,660) rounding off to Rs.16,700/- towards compensation.

4.0 In the result, the appeal is partly allowed. The appellant will be entitled for an additional amount of Rs.16,700/- with interest at the rate of six per cent from the date of application before the Tribunal. The judgment and award of the Motor Accident Claims Tribunal No.4 (Main), Ahmedabad passed in M.A.C.P. No. 265 of 1978 dated 28/29.01.1980 is modified to the

aforesaid extent. Rest of the judgment and award is confirmed. No order as to costs.

(K.S. Jhaveri,J.)

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